

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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LOU ANN MERKLE	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-3703
v.	:	
	:	
UPPER DUBLIN SCHOOL DISTRICT,	:	
UPPER DUBLIN TOWNSHIP POLICE	:	
DEPARTMENT, MARGARET THOMAS,	:	
DR. CLAIR BROWN, JR. and	:	
DETECTIVE JACK HAHN	:	
	:	
Defendants.	:	
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MEMORANDUM

KELLY, J.

JULY , 1999

Defendants have filed a Motion for Summary Judgment on the Plaintiff's nine-count Complaint pursuant to Federal Rule of Civil Procedure 56(c). For the reasons set forth below, the Motion will be granted as to Plaintiff's federal law claims. We will decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims under 28 U.S.C. 1367(c)(3). Therefore, these will be dismissed without prejudice.

I. BACKGROUND

Plaintiff Lou Ann Merkle ("Plaintiff") commenced the within action against Defendants Upper Dublin School District (the "School District"), Principal Margaret Thomas ("Principal Thomas"), and Dr. Clair Brown, Jr. ("Dr. Brown") (collectively, "School District Defendants"); and Defendants, the Upper Dublin

Township Police Department ("Police Dept.") and Detective Jack Hahn ("Detective Hahn") (collectively, the "Police Defendants").

Plaintiff is an art teacher at the Sandy Run Middle School in Upper Dublin School District, Upper Dublin Township, PA. On August 28, 1997, Plaintiff was loading 144 boxes of unopened and unused crayons into her car when Principal Thomas approached her. Principal Thomas asked Plaintiff what she was doing and Plaintiff responded that she was donating the material to the North Hills Community Center (the "Center"). Principal Thomas directed that the materials be returned to the school building while she looked into the matter. Plaintiff promptly complied with Principal Thomas's demand and returned the items.

Principal Thomas subsequently called Dr. Brown, and was directed to call the police to investigate the theft of school district property. Thereafter, Principal Thomas provided the police department with a report and on September 2, 1997, Plaintiff was arrested and charged with theft by unlawful taking (18 Pa.C.S.A. § 3921), receipt of stolen property (18 Pa.C.S.A. § 3925) and criminal attempt (18 Pa.C.S.A. § 901). Plaintiff was also suspended from her position as school teacher for a period of 91 days and notified that dismissal proceedings were being instituted against her.

On October 6, 1997, District Justice Patricia Zaffarano held a preliminary hearing, after which she concluded that there

was sufficient evidence to bind Plaintiff over for trial. Thereafter, Plaintiff filed a Habeas Corpus Petition with Montgomery County Court of Common Pleas and upon the Court's granting the Petition (stating that no criminal intent existed on the facts presented), she was reinstated to her employment on February 9, 1998.

In her Complaint, Plaintiff sets forth nine counts against Defendants. Seven of the nine counts are against the School District Defendants and three counts are against Detective Hahn and the Township (Count V is raised against all named defendants). For the reasons set forth below, Defendants' Motion for Summary Judgment will be granted as to Counts I through V, and Counts VI through IX will be dismissed, as jurisdiction in this Court is no longer appropriate.

II. STANDARD

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986). Defendant, as the moving party has the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, the non-moving party must go beyond the pleadings and present "specific facts showing that there is a genuine issue

for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

In her nine-count Complaint, Plaintiff alleges the following:

- a. Count I alleges that School District Defendants violated her First Amendment rights;
- b. Count II alleges that Police Defendants violated her Fourth Amendment rights;
- c. Count III alleges that School District Defendants violated her Sixth Amendment rights;
- d. Count IV alleges that School District Defendants violated her Fourteenth Amendment rights;
- e. Count V alleges that all Defendants violated her Constitutional rights pursuant to 42 U.S.C § 1983;
- f. Count VI alleges state law defamation claims against School District Defendants;
- g. Count VII alleges state law false light/invasion of privacy claims against School District Defendants;
- h. Count VIII alleges a state law false arrest claim against Police Defendants; and

I. Count IX alleges state law malicious prosecution claims against School District Defendants.

For purposes of clarity, Counts I through IV will be addressed as the underlying Constitutional violations that make up Plaintiff's 42 U.S.C § 1983 claim. Therefore, Count V will encompass each of the first four counts and will be addressed first. The remaining state law claims (Counts VI through IX) will be dealt with at the conclusion of the Court's analysis of the federal claims.

A. Count V--Title 42 U.S.C. § 1983

Plaintiff alleges that, while acting under color of state law, School District Defendants engaged in conduct depriving her of her rights as secured by the First, Sixth and Fourteenth Amendments of the United States Constitution. She also alleges that Police Defendants acted under state law when they engaged in conduct that deprived her of her rights as secured by the Fourth Amendment. She seeks compensatory damages and equitable relief as a result of these alleged violations of her Civil Rights pursuant to Title 42 U.S.C § 1983.

Section 1983 of Title 42 of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation , custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
. . . .

42 U.S.C. § 1983.

In order to bring a successful § 1983 claim, a plaintiff must demonstrate that: (1) the challenged conduct was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. Olender v. Township of Bensalem, 32 F.Supp.2d 775, 782 (E.D.Pa. Jan. 5, 1999); Parratt v. Taylor, 451 U.S. 527, 535 (1981). I agree with Plaintiff's contention that each Defendant was acting under color of state law, however, it is important to address the second prong of § 1983 (whether Plaintiff has demonstrated that the challenged conduct led to a deprivation of her rights, privileges or immunities secured by the United States Constitution or federal law). As discussed below, I conclude that Plaintiff has not met this burden and I will grant summary judgment in favor of Defendants on Counts I through V.

B. Count One--Plaintiff's First Amendment Claim.

In her Complaint, Plaintiff alleges that School District Defendants' actions, which caused her arrest and removal from her teaching position, "were motivated by an antipathy toward her due to her speech and a desire to punish and chill her advocacy regarding multiculturalism." She asserts that such action

was taken in violation of her First Amendment rights to free speech.

When a government employee alleges that his/her First Amendment rights to free speech were violated, assuming that such speech is protected, he/she must establish causation (i.e., that the conduct was a substantial factor (a motivating factor) in the government's decision to fire or not to hire him/her). Mize v. Borough of Kennett Square, et al., No. CIV.A.96-2609, 1997 WL 152802, at *3 (E.D.Pa.March 27, 1997). "If the employee meets that burden, the employer may show it would have reached the same decision as to employee's employment in the absence of the protected conduct." Id.; Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 287 (1977).

Plaintiff contends that the School District was motivated by "antipathy toward her due to her speech and a desire to punish and chill her advocacy regarding multiculturalism." Thus, the School District Defendants must show that they would have reached the same decision to suspend in the absence of the protected speech.

It is clear that the School District would have suspended Plaintiff even without the exercise of her free speech. The suspension was motivated by the fact that she was caught moving 144 unused boxes of crayons into her car, a criminal investigation was being conducted against her, and an arrest was

made. After the Montgomery County Court of Common Pleas dismissed the case against Plaintiff, she was reinstated by the School District. No matter how antipathetic the School District Defendants were towards Plaintiff's outspokenness, there are unrefuted independent reasons for Plaintiff's suspension.

In the case at bar, Plaintiff has failed to present any evidence in support of her claim that the School District Defendants' decision to suspend her was a result of collateral motivation. She has also failed to present any evidence that she would not have been suspended had she not engaged in constitutionally protected free speech. As a result, the School District Defendants are entitled to judgment as a matter of law on Plaintiff's First Amendment claims.

C. Count II--Plaintiff's Fourth Amendment Rights

In Count Two of her Complaint, Plaintiff alleges that Police Defendants violated her Fourth Amendment rights as a result of their misconduct. First, Plaintiff contends that Detective Hahn was following Department policy when he filed the criminal complaint that resulted in Plaintiff's arrest.¹ Second, Plaintiff claims that Detective Hahn failed to properly investigate the crayon incident, and failed to question the

¹ Plaintiff alleges that Detective Hahn did not have the requisite probable cause to believe that Plaintiff was guilty of a crime.

improper motives for the charge of criminal activity against Plaintiff. Finally, Plaintiff claims that the Police Department's failure to properly train, supervise or otherwise direct Detective Hahn was a cause of his making an application for arrest without probable cause. In sum, Plaintiff is arguing that her Fourth Amendment rights were violated because her arrest was not supported by probable cause, and therefore the Police Defendants are responsible.

"It is not the function of the police to arrest only guilty persons; rather, the function of the police is to arrest persons on probable cause." Mordan v. Siegfried, No. CIV.A.94-0025, 1995 WL 89049, at *3 (E.D.Pa. Feb. 27, 1995); Graham v. Connor, 490 U.S. 386, 396, (1989). "Innocence of the charge 'is largely irrelevant to [a] claim of deprivation of liberty without due process of law. The Constitution does not guarantee that only the guilty will be arrested.'" Mordan, 1995 WL 89049, at *3, (citing Baker v. McCollan, 443 U.S. 137, 145 (1979)).

"'[P]robable cause is a fluid concept--turning on the assessment of probabilities in particular factual contexts' and must be evaluated in light of the totality of the circumstances." United States v. Ruiz, No. CRIM.A.98-120, 1998 WL 622405, at *2 (E.D.Pa. Sept. 15, 1998)(quoting Illinois v. Gates, 462 U.S. 213, 232, 238 (1983)). Probable cause to arrest exists if "'at the moment the arrest was made . . . the facts and circumstances

within [defendants'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing' that [plaintiff] had violated [the law]." Walker v. Spiller, No. CIV.A.95-6921, 1999 WL 343636, at *2 (E.D.Pa. May 24, 1999)(quoting Hunter v. Bryant, 502 U.S. 224, 228 (1991)(quoting Beck v. Ohio, 379 U.S. 89, 91 (1964))). Where the facts underlying the probable cause determination are not in dispute, summary judgment is appropriate. Id.

In his deposition, Detective Hahn states that the only reason that he concluded that there was probable cause was based on the statement by Principal Thomas that Plaintiff admitted to stealing the art supplies.² This is the only fact in dispute. Principal Thomas refutes this by claiming that she never explicitly informed Detective Hahn of any admission on Plaintiff's part. However, while this fact is disputed, I don't need to consider it alone, for the standard used is the "totality of the circumstances."

Plaintiff was arrested pursuant to an arrest warrant and was charged with the crimes of theft by unlawful taking (18

² Q: And in this case, correct me if I'm wrong, the only reason you concluded that there was probable cause was based on the statement by Marge Thomas that Lou Ann Merkle admitted stealing the merchandise?"

A: Yes, sir. She was an eyewitness and a credible witness."

Pa.C.S.A. § 3921)³, receipt of stolen property (18 Pa.C.S.A. § 3925)⁴ and criminal attempt (18 Pa.C.S.A. § 901)⁵. It is important to stress that Plaintiff was discovered loading her car with 144 boxes of crayons that did not belong to her.

The biggest fear of those who commit crimes is getting caught, and when or if they do, they are most likely not going to admit their guilt on sight. Thus, when an individual (as in this situation) is found loading her car with materials that do not belong to her, and reliable witnesses attest to this, a police officer who gets the report has probable cause to arrest.⁶

³ Section 3921 of the Pennsylvania Crimes Code states:
"A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 Pa.C.S.A. § 3921.

⁴ Section 3925 of the Pennsylvania Crimes Code states:
"A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner."

⁵ Section 901 of the Pennsylvania Crimes Code states:
"A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime."

⁶ Notwithstanding, in the case at bar Detective Hahn made his arrest pursuant to an arrest warrant that was issued on a finding of probable cause. However, this is not intended to suggest that my conclusion in this case serves to counter the United States Court of Appeals for the Third Circuit's decision in Montgomery v. Di Simone, 159 F.3d 120 (3d Cir.1998), wherein the Third Circuit decided that a municipal conviction is not a sufficient means to a finding of probable cause to arrest. Montgomery's facts were significantly different than the facts in the case at bar (the Third Circuit found a material issue(s) of fact present in conflicting deposition testimony), however, I stress that my

Plaintiff was arrested and charged with, inter alia, theft by unlawful taking. That crime only requires the unlawful taking of movable property of another with intent to deprive him thereof. Even if Plaintiff's intent was to be charitable, she did intend to deprive the school district of its property.

The Police Defendants obtained a valid warrant to arrest Plaintiff. "Defendant's action in arresting Plaintiff and leaving to the court the determination of guilty or not guilty was objectively reasonable under the circumstances and, thus, not in violation of plaintiff's Fourth Amendment probable cause rights." Id. at *4. Plaintiff has not offered evidence to counter this conclusion. When reviewing the arrest and the probable cause issue under the guise of the totality of the circumstances, I find that Detective Hahn did, in fact, have probable cause to arrest Plaintiff. Thus, her Fourth Amendment claim must fail.

D. Count III--Plaintiff's Sixth Amendment Rights.

Plaintiff claims that School District Defendants' false and misleading accusations were egregious and wilfully malicious attempts to deprive her of her Constitutional right to be free from malicious prosecution. She contends that Principal Thomas

finding of probable cause is not founded solely upon the Magistrate's signing of the arrest warrant, but rather, upon analysis of the totality of the circumstances. My finding is based primarily on Plaintiff's actual removal of the crayons from the school.

and Dr. Brown instigated her false arrest and prosecution. She further alleges that School District Defendants, despite their actual knowledge that no crime had been committed by Plaintiff, failed and refused to acknowledge their wrongdoing in initiating criminal charges against her and refusing to have the charges revoked.

Along with a § 1983 claim based upon false arrest, a plaintiff may also assert a Fourth Amendment claim of false imprisonment, and Sixth Amendment claims of malicious prosecution To prove false arrest, false imprisonment, or malicious prosecution, the plaintiff must prove that the defendants lacked probable cause to arrest and prosecute him.

Smith v. Borough of Pottstown, No.CIV.A. 96-1941, 1997 WL 381778, at *8 (E.D.Pa. June 30, 1997); See Gilbert v. Feld, 842 F.Supp. 803, 821 (E.D.Pa.1993) ("An unlawful arrest--that is, an arrest without probable cause-- gives rise to a cause of action for false imprisonment as well as false arrest.");

"In an action for malicious prosecution, the plaintiff must prove that: (1) the defendant initiated the criminal proceedings against him/her without probable cause and primarily for a purpose unrelated to bringing an offender to justice, and (2) the proceedings were terminated in plaintiff's favor."

Jaindl v. Mohr, 432 Pa.Super. 220, 227, 637 A.2d 1353, 1357; Cap v. K-Mart Discount Stores, Inc., 257 Pa.Super. 9, 11; Bruch v. Clark, 352 Pa.Super. 225, 228.

It is not disputed that when Plaintiff was granted

Habeas Corpus relief in the Montgomery County Court of Common Pleas, the criminal proceedings were terminated in her favor. However, as explained above, this Court has found that probable cause existed⁷ and pursuant to this finding, Plaintiff was not prosecuted maliciously as a matter of law. Also, because probable cause did, in fact, exist in this matter, a claim of false arrest lacks merit. It is unfounded that Plaintiff's Sixth Amendment rights were violated, for neither malicious prosecution nor false arrest took place. Thus, Count III must fail.

E. Count IV--Plaintiff's Fourteenth Amendment Rights

In Count IV of her Complaint, Plaintiff contends that School District Defendants defamed her by alleging that she had engaged in theft. She claims that School District Defendants, through the charge of theft were wilful, reckless and in deliberate disregard of her rights and said defamation occurred in the course of the First and Sixth Amendment violations, thus violating her Fourteenth Amendment rights as well.

Plaintiff's Complaint states that she has a liberty interest in her good name, reputation, honor and integrity, and

⁷ "[I]t has been immemorially held that the public interest requires that the legally trained mind of the judge and not the more or less emotional minds of the jurors, decide whether or not there was probable cause for the initiation of prosecution." Jaindl v. Mohr, 432 Pa.Super. 220, 227, 637 A.2d 1353, 1357, (citing Simpson v. Montgomery Ward, 354 Pa. 87, 90, 46 A.2d 674, 676 (1946)).

as a result of School District Defendants' alleged conduct, she was deprived of that Constitutional right. The United States Court of Appeals has stated that injury to one's reputation is not cognizable under the Constitution of the United States. Kelly v. Borough of Sayreville, 107 F.3d 1073, 1078 (3d Cir.1997); Robb v. City of Philadelphia, 733 F.2d 286, 294 (3d Cir.1984)("Stigma to reputation alone, absent some accompanying deprivation of present or future financial injury due solely to government defamation does not constitute a claim for deprivation of a constitutional liberty interest."); see also Clark v. Township of Falls, 890 F.2d 611, 619 (3d Cir.1989)(where the Third Circuit held that "stigma plus" is required to establish a constitutional deprivation). Plaintiff has failed to allege any deprivation of present or future liberty due to School District Defendants' conduct. She was suspended for 91 days, however, only to regain her employment with the very school district that she is imputing liability on today. Perhaps if Plaintiff was fired as a result of the alleged defamatory statement, and this Court found that it was that statement that led to her termination, then a "stigma plus" label would be applicable here.⁸ However, Plaintiff was suspended pursuant to a criminal

⁸ After this Opinion was written, but before it was filed, I was notified via Motion to Extend Discovery that Merkle has recently resigned from her position with the Upper Dublin School District. Upon review of the allegations in that Motion, I find that her resignation has no effect on my decision.

investigation that was being brought upon her as a result of an arrest--an arrest that I've held to have been supported by probable cause. Therefore, her liberty interest claim, resting solely on the alleged injury to her reputation, is not sufficient to survive this Motion.

F. Qualified Immunity

Defendants argue that they are entitled to qualified immunity regarding Plaintiff's § 1983 claims. "The threshold inquiry in a qualified immunity analysis is whether the constitutional right asserted to have been violated is clearly established." Mordan, 1995 WL 89049, at *4.; Guiffre v. Bissell, 31 F.3d 1241, 1255 (3d Cir.1994). There is no doubt that Plaintiff's First, Fourth, Sixth and Fourteenth Amendment claims are clearly established constitutional rights. However, the next step in the analysis is to determine whether defendants could reasonably have thought their actions to be consistent with the constitutional provisions that are at issue (i.e., whether their conduct did not violate those constitutional provisions). Id.

I find that Defendants' conduct was reasonably consistent with Plaintiff's First, Fourth, Sixth and Fourteenth Amendment rights. It is important to note again that Plaintiff was observed placing school property into her car. Principal Thomas reported what she saw to her supervisor, and upon further discussion, instigated a criminal investigation against

Plaintiff. The Police Defendants acted reasonably in executing the arrest warrant, for the undisputed facts presented support a finding of probable cause.

IV. CONCLUSION

This Court has dismissed each of Plaintiff's Constitutional claims, for no violations exist therein. Thus, while I agree that the challenged conduct was committed by a person acting under the color of state law, Plaintiff's § 1983 claim must also be dismissed pursuant to the above discussions, for Plaintiff was not deprived of any right, privilege, or immunity secured by the Constitution of the United States.

In addition, each Defendant is entitled to summary judgment in their favor on Counts I through V on the basis of qualified immunity as well.

This Court originally had jurisdiction over the case under federal question jurisdiction, 28 U.S.C. § 1331. We also had supplemental jurisdiction over the state law claims. Each of Plaintiff's federal law claims have been disposed of and as a result, no federal question(s) exist. This Court will not determine the validity of these claims as all federal claims have been dismissed.

For the reasons stated above, Defendants' Motion(s) for Summary Judgment are hereby granted as to Counts I through V. The remaining Counts involving Pennsylvania state law claims will

be dismissed without prejudice, thus allowing Plaintiff to present Counts VI through IX to the appropriate Pennsylvania Court of Common Pleas.

An appropriate Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOU ANN MERKLE	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-3703
v.	:	
	:	
UPPER DUBLIN SCHOOL DISTRICT,	:	
UPPER DUBLIN TOWNSHIP POLICE	:	
DEPARTMENT, MARGARET THOMAS,	:	
DR. CLAIR BROWN, JR. and	:	
DETECTIVE JACK HAHN	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of July 1999, upon consideration
Defendants' Motion for Summary Judgment, the Plaintiff's
response, and the Defendants' reply, IT IS HEREBY ORDERED that

the Defendants' Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that:

(1) Counts I through V of the Plaintiff's Complaint are DISMISSED with prejudice and

(2) Counts VI through IX are DISMISSED without prejudice.

BY THE COURT:

Robert F. Kelly, J.